

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RUSSELL GAITHER,

Plaintiff,

vs.

NATHAL DEAL, Commissioner; MR.  
PHILBIN, Warden; MRS. HARVEY,  
Deputy Warden; MRS. DORSEL, Nurse;  
MRS. VXZERRO, Nurse; MRS. BANKS,  
Nurse; and JOHN DOE, all nurses unknown  
at this time, et. al.,

Defendants.

**4:21CV3063**

**MEMORANDUM  
AND ORDER**

On March 18, 2021, this court ordered that Plaintiff show cause within 30 days why this case should not be dismissed pursuant to 28 U.S.C. § 1915(g), which provides that no prisoner shall bring a civil action under that statute if he has brought an action in a United States court that was, on three or more occasions, dismissed because the suit was frivolous, malicious, or failed to state a claim upon which relief may be granted “unless the prisoner is under imminent danger of serious physical injury.” Before entering that order, this court noted:

The court takes judicial notice that the United States District Court for the Southern District of Georgia has previously determined that three or more federal court cases brought by Plaintiff, while a prisoner, were dismissed as frivolous or for failure to state a claim. *See, e.g., Gaither v. Georgia*, No. 6:19-CV-49, 2020 WL 261236 (S.D. Ga. Jan. 16, 2020), *report and recommendation adopted*, No. 6:19-CV-49, 2020 WL 762854 (S.D. Ga. Feb. 14, 2020) (identifying at least three civil actions that were dismissed and constitute strikes under § 1915(g) and listing four additional cases where Plaintiff was identified as a “three-striker”); *Gaither v. Epps*, No. 1:16-CV-103, 2016 WL 4445264 (S.D. Ga. Aug. 19, 2016), *report and recommendation adopted*, No. 1:16-CV-103, 2016 WL 6272384 (S.D. Ga. Oct. 25, 2016) (identifying strikes and dismissing based on three strikes rule).

(Filing 5 at CM/ECF pp. 1-2.) In the alternative, the court gave Plaintiff leave to pay the court's \$402.00 filing and administrative fees.

In response to the court's order, Plaintiff filed an 11-page chart with exhibits (Filing 7) that appears to be a listing of Plaintiff's previous complaints filed in federal court either in Georgia or Nebraska. The complaints are identified only by date of filing, not by case number or caption. After thorough review of Plaintiff's case descriptions and exhibits, I conclude that Plaintiff has failed to show that any of the cases referenced in the court's prior Memorandum and Order (Filing 5) were actually *not* dismissed as frivolous or for failure to state a claim, nor has he shown that the case he seeks to file in this court is one in which Plaintiff is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Further, Plaintiff has failed to pay the \$402.00 filing and administrative fees.

Accordingly, and consistent with the court's warning that "[i]n the absence of good cause shown, or the payment of the necessary fees, this action will be dismissed" (Filing 5, at CM/ECF p. 2), this action will be dismissed without prejudice.

IT IS ORDERED:

1. This case is dismissed without prejudice under the three-strikes rule in 28 U.S.C. § 1915(g).
2. Judgment shall be entered by separate document.

DATED this 22nd day of April, 2021.

BY THE COURT:

  
Richard G. Kopf  
Senior United States District Judge